

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

POWERS PRINTING CO., INC.,

Plaintiff,

V.

AGFA CORPORATION and XPEDX,

Defendants.

CIVIL ACTION  
NO. 04-CV-12041-REK

**MOTION TO COMPEL  
PLAINTIFF TO APPEAR**

Pursuant to United States District Court for the District of Massachusetts Local Rule 83.5.2(a), defendant xpedx, a division of International Paper Company (“xpedx”), respectfully requests that the Court order plaintiff, Powers Printing Co., Inc. (“Powers Printing”), to enter its appearance before the Court in the above-captioned matter within thirty (30) days of the entry of an order by this Court.

As grounds for this motion, xpedx states that Powers Printing filed this action in the South Carolina Court of Common Pleas for Richland County on or about May 5, 2004, alleging a breach of contract and misrepresentation in connection with the sale of certain printing equipment. On or about June 7, 2004, co-defendant AGFA Corporation removed the matter to the United States District Court for the District of South Carolina. On or about July 12, 2004, xpedx answered and counterclaimed, seeking recovery of approximately \$100,000 for goods delivered, plus interest, from Powers Printing. On the same date, co-defendant, AGFA Corporation, answered but also moved to transfer venue to the United States District Court for the District of Massachusetts. The motion to transfer venue was allowed on September 7, 2004.

Both AGFA Corporation and xpedx have entered appearances before this Court; to date, Powers Printing has not. The failure of Powers Printing to appear has hampered important pre-trial milestones, including the conduct of a Rule 16 scheduling conference.

which should have been held within sixty (60) days of transfer pursuant to Local Rule 16.1(a). In addition, the failure of Powers Printing to appear has prevented xpedx from pursuing its counterclaim in this action. Accordingly, xpedx respectfully requests that this Court compel Powers Printing to enter its appearance and hold a Rule 16 scheduling conference at the Court's earliest convenience so that the parties can litigate this case – a case originally filed by Powers Printing, not xpedx – to final resolution.

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

I hereby certify that I conferred with Ralph Mechling, who upon information and belief is an officer of Powers Printing Co., Inc., on September 12, 2005 in an attempt to narrow the issues presented in this motion, and requested that Mr. Mechling or his counsel, if there was one, contact me no later than close of business on September 14, 2005 if they wished to discuss this motion further. As of the close of business on September 14, 2005, I had not heard from Mr. Mechling or any counsel purporting to act on his behalf.

Respectfully submitted,

**XPEDX,**

By its attorneys,

/s/ Brandon L. Bigelow

John R. Skelton, BBO #552606

Brandon L. Bigelow, BBO #651143

**BINGHAM MCCUTCHEN LLP**

150 Federal Street

Boston, MA 02110-1726

(617) 951-8000

Dated: September 15, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon each party appearing pro se and the attorney of record for each other party by mail and electronically via the CM/ECF system on September 15, 2005.

/s/ Brandon L. Bigelow  
Brandon L. Bigelow